

Superseded 5/12/2015

58-68-501 Unlawful conduct.

- (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
 - (a) buying, selling, or fraudulently obtaining any osteopathic medical diploma, license, certificate, or registration; and
 - (b) aiding or abetting the buying, selling, or fraudulently obtaining of any osteopathic medical diploma, license, certificate, or registration;
 - (c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:
 - (i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or
 - (ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or
 - (d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.
- (2) "Unlawful conduct" does not include:
 - (a) establishing, administering, or enforcing the provisions of a policy of accident and health insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;
 - (b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:
 - (i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and
 - (ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
 - (c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:
 - (i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and
 - (ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
 - (d) requesting or recommending that a patient obtain a second opinion from a licensee;
 - (e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;
 - (f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:
 - (i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or
 - (ii) providing compensation incentives that are not related to the treatment of any particular patient;

- (g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee; or
- (h) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.